

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

NEXTGEAR CAPITAL, INC.,

Plaintiff,

v.

CNG AUTO GROUP, INC. d/b/a TOP  
WHEELS; ELONTO R. HERNANDEZ COLON;  
and JULISSA M. FUENTES RIVERA,

Defendants.

CIVIL NO. 15-1824

Breach of Contract,  
Collection of Monies,  
Repossession of Personal Property

**COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW the Plaintiff NextGear Capital, Inc. ("NextGear" or "Plaintiff"), through its undersigned attorneys, and respectfully states, alleges, and avers as follows:

**I.**

**JURISDICTION AND VENUE**

1. This Honorable Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, as the matter in controversy exceeds the value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

2. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c), given that Defendant CNG Auto Group, Inc. d/b/a Top Wheels ("Top Wheels") and NextGear do business in the Commonwealth of Puerto Rico and the claims alleged in this Complaint arose in this district.

**II.**

**NATURE OF THE ACTION**

3. This is a civil action for breach of contract under Article 1054 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31 § 3018.

4. This is also an action for collection of monies and repossession of personal property pursuant to the Puerto Rico Commercial Transactions Act (the “PR-UCC”), Secured Transactions Section, P.R. Laws Ann. tit. 19 § 2211, et seq.

### **III.**

#### **THE PARTIES**

5. NextGear is a corporation organized and existing under the laws of the State of Indiana—with its principal place of business located at 11799 N. College Ave., Carmel, Indiana 46032—that is actively engaged in the business of providing flexible lines of credit to automotive dealers in the United States and abroad.

6. Upon information and belief, Top Wheels is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico—with its principal place of business located at Bo. Buena Vista, Carr. 167 Km 15.3, Bayamón, Puerto Rico 00956—that is actively engaged in the business of selling used automobiles in the Commonwealth of Puerto Rico.

7. Guarantor Elonto R. Hernández Colón is of legal age, President of Top Wheels, and resident of Toa Alta, Puerto Rico.

8. Guarantor Julissa M. Fuentes Rivera Colón is of legal age, Vice President of Top Wheels, and resident of Toa Alta, Puerto Rico.

### **IV.**

#### **STATEMENT OF FACTS**

9. On August 1, 2014, NextGear entered into a Demand Promissory Note and Loan and Security Agreement with Top Wheels (the “Agreement”). See Exhibit 1.

10. Pursuant to and upon execution of the Agreement, NextGear agreed to lend Top Wheels “the principal sum of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00), or such greater or lesser sum which may be advanced to or on behalf of Borrower from time to time, together with all costs, interests, fees, and expenses as provided for under this Note.” *Id.*, at p. 2.

11. Furthermore, under the terms of the Agreement, the principal would accrue interest at a rate of 4.5% per annum. *Id.*, at p. 18.

12. When NextGear entered into the Agreement with Top Wheels (August 1, 2014), Elonto R. Hernández Colón made and entered into an Individual Guaranty in favor of NextGear pursuant to the referenced Agreement. See Exhibit 1.

13. That same day, Julissa M. Fuentes Rivera also made and entered into a separate Individual Guaranty in favor of NextGear pursuant to the Agreement. *Id.*

14. Pursuant to clause 2(a) of the Agreement, “[Top Wheels] grant[ed] to [NextGear] a continuing security interest in all of Borrower’s assets and properties, wherever located, including, without limitation, all equipment of any kind or nature; all vehicles and vehicle parts; all Inventory now owned or hereafter acquired [...] (collectively, the “Collateral”).” *Id.*, at p. 2.

15. Specifically, the Collateral in this case consists of 31 automobiles worth approximately \$475,844.83. See Declaration Under Penalty of Perjury of Mr. Angel M. García Rodríguez attached hereto as Exhibit 2.

16. The lien over the Collateral is registered in favor of NextGear in the Puerto Rico Department of State’s Secured Transactions Registry. See Exhibit 3.

17. Upon information and belief, the lien vehicles are currently in Top Wheels’ warehouse located at Bo. Buena Vista, Carr. 167 Km 15.3, Bayamón, Puerto Rico. See Exhibit 2, at ¶ 4.

18. Pursuant to clause 6(a) of the Agreement, the borrower (Top Wheels) would be in default the instant “(a) Borrower or any Guarantor fails to perform any of its obligations, undertakings or covenants under this Note or under any other Loan Document, **including any obligation to repay any Liability when due and Borrower’s obligation to pay upon demand any outstanding Liability under this Note.**

19. Beginning in March 2015, NextGear has had automatic payment attempts against Top Wheels’ bank account returned because Top Wheels had insufficient funds in its account.

Multiple routine installment payments were missed and could not be paid by Top Wheels even though Top Wheels is required to keep sufficient funds in its bank account. See Exhibit 2, at ¶ 5.

20. Top Wheels made its last loan payment on April 24, 2015. See Exhibit 2, at ¶ 6 and Exhibit 4.

21. Due to Top Wheels' default, Defendants owe NextGear all due and unpaid installments as well as the total loan balance. The outstanding loan amount (which is certain, payable, and due) is \$481,114.56 as of June 3, 2015. See Exhibit 2, at ¶ 11. Said amount is calculated as follows: (a) \$463,060.62 of floorplan/receivable advance; (b) \$8,637.52 of interest; (c) \$9,416.42 of fees.

22. NextGear made several extrajudicial efforts to resolve this matter, including phone calls and written communications, which ultimately proved unsuccessful. See Exhibit 2, at ¶ 12.

**V.**

**CLAIM FOR RELIEF**

**FIRST CLAIM**

**BREACH OF CONTRACT AND COLLECTION OF MONIES UNDER P.R. CIVIL CODE**

23. Paragraphs 1-22 are hereby incorporated by reference.

24. Top Wheels has breached its obligations under the Agreement, including, without limitation, by defaulting on loan payments.

25. As a result of said breaches, Top Wheels has an outstanding debt to NextGear of \$481,114.56, plus continually accruing interest.

26. The abovementioned debt is certain, payable, and due to NextGear.

**SECOND CLAIM**

**BREACH OF GUARANTY OBLIGATIONS**

27. Paragraphs 1-26 are hereby incorporated by reference.

28. Elonto R. Hernández Colón and Julissa M. Fuentes Rivera have breached their obligations under their respective Individual Guaranty Agreements, including, without limitation, by defaulting on loan payments.

29. As a result of said breaches, Hernández and Fuentes have an outstanding debt to NextGear of \$481,114.56, plus continually accruing interest.
30. The abovementioned debt is certain, payable, and due to NextGear.

**THIRD CLAIM  
REPOSSESSION OF PERSONAL PROPERTY UNDER THE PR-UCC**

31. Paragraphs 1-30 are hereby incorporated by reference.
32. Upon Top Wheels' default, NextGear has the right to take possession of the lien personal property (the Collateral).
33. Defendants have the obligation to assist Plaintiff in taking possession of the aforementioned automobiles.

**VI.**

**PRAYER FOR RELIEF**

WHEREFORE, NextGear respectfully prays that:

- a) Top Wheels and its Guarantors be required to pay the outstanding loan amount (\$481,114.56), plus interest accrued through the date of payment, for failure to satisfy its obligations under the Agreement; or
- b) That the Honorable Court award NextGear any additional just and equitable relief, plus payment of costs and attorneys' fees in this action.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of June, 2015.

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